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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,767	09/05/2006	Sabrina Higgins	102792-532/11160P1US	6304

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EXAMINER	
ROONEY, NORA MAUREEN	

ART UNIT	PAPER NUMBER
1644	

MAIL DATE	DELIVERY MODE
11/24/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/595,767	HIGGINS ET AL.	
	Examiner	Art Unit	
	NORA M. ROONEY	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08/30/2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 13-16* is/are pending in the application.

4a) Of the above claim(s) *9,10 and 13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8, 14-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's response filed on 08/30/2010 is acknowledged.

2. Claims 1-10 and 13-16 are pending.

3. Claim 13 stands withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and claims 9-10 stand withdrawn as being directed to a non-elected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02/10/2009.

4. Claims 1-8 and newly added claims 14-16 are currently under consideration as they read on a method of deactivating an allergen comprising dispersing into an airspace capable or able to support said allergen an allergen-deactivating amount of a deactivant comprising citrus oil or lemon grass oil.

5. The following rejections are necessitated by the amendment filed on 08/30/2010.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-8 and 14-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7, 10-11 and 19 of copending Application No.10/597,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 1-8 and 11-14-16 are directed to a method comprising: dispersing into an airspace an amount of an allergen reducing material comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass and claims 7, 10-11 and 19 are directed to a method for treating an allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound dispersed into an airspace in at which an allergen-contaminated inanimate substrate is located, to provide achieve a prolonged reduction in the allergen loading of the substrate, wherein the reduction after 14 days is at least as great as the initial reduction of claim wherein the deactivant is selected from: a citrus oil including orange oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass or a component thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's response filed on 08/30/2010 has been fully considered, but is not found persuasive.

Applicant argues:

> "Applicants respectfully traverse the Examiner's "'double patenting" rejection of the foregoing claims in view of copending U.S. Application No.! 10/597448 (hereinafter "dae copending 448 application") which is commonly assigned with the present application. Applicants point out that to date, no claims in the instant application or the 448 application have been cited as being allowable. Furthermore, the applicant points out that in this present paper, the scope of the independent claim has been amended, which may provide a basis for the withdrawal of the present "'double patenting" rejection in light of the current claims of US Serial No. 10/597448. As such it is thus believed that the Examiner's issuance of a "double patenting" rejection is improper and/or as being premature. Applicants believe that entry of a Terminal Disclaimer at this point in time is premature, as the scope of allowable claims in the present application have not yet been established agreeing to the limitation of the term and scope of protection may be prejudicial to the fights of the applicant, e.g., wherein narrowed claims of the present application may be indicated as allowable and such claims might no longer give basis to a "double patenting" rejection. However, upon the indication of allowable subject matter, the Examiner is invited to reinstate the instant rejection, if appropriate, at such later time."

It remains the Examiner's position that the provisional double patenting rejection is proper and stands until the conflicting claims are amended, cancelled or a Terminal Disclaimer is filed.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, 7-8 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Worwood et al. (PTO-892; Reference U).

Worwood et al. teaches a method of cleansing the air comprising: dispersing a citrus oil; a mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass into an airspace within which is present an inanimate surface; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is dispersed into the airspace as a vapour over an extended period by the use of heat; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is dispersed via a wick dipped into a reservoir; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is provided as a water-in-oil emulsion containing up to 2% by weight of one or more of the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is incorporated into a candle; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is dispersed into the airspace on two or more separate periods; wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is dispersed into the airspace by burning a candle containing the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass; and wherein the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass is dispersed into the airspace by vaporizing the citrus oil; mint oil; bois de rose oil; frankincense; oil of bergamot or oil of lemon grass in an oil burner (In particular, 'Air Fresheners' section on page 302; first paragraph and list of oils spanning columns on page 303; 'The Kitchen' section on page 304 and

first column on page 305; paragraph spanning pages 308-309; left column of page 310; last sentence of page 310 to end of first paragraph on page 311; and 'Fragrant Candles' section on page 314).

The recitation of "reducing the amount of a Der p 1 allergen present in house dust on an inanimate surface" is inherent. The reference teaches the exact same method of dispersing the exact same essential oils in the exact same manner in the exact same space, so the result is inherent. In addition, the reference teaches that the method purifies the air on page 304, which inherently includes the reduction of Der p1 in the air.

The reference teachings anticipate the claimed invention.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worwood et al. (PTO-892; Reference U).

Worwood et al. has been discussed *supra*.

The claimed invention differs from the prior art in the recitation of "wherein the candle comprises at least 2% by weight of one or more of: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and, oil of lemon grass" of claim 6.

It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine the optimal essential oil concentration because the concentration of the active ingredient is an art-recognized results-effective variable which would have been routinely determined and optimized in the art. Because the determination of active ingredient concentration is well within the purview of one of ordinary skill in the art at the time the invention was made, it lends no patentable import to the claimed invention. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F2d 454,456,105 USPQ 233; 235 (CCPA 1955). see MPEP § 2144.05 part II.

From the reference teachings, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

12. No claim is allowed.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nora M. Rooney whose telephone number is (571) 272-9937. The examiner can normally be reached Monday through Friday from 8:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 22, 2010

/Nora M Rooney/

Primary Examiner, Art Unit 1644